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Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-2022-1055

Barry L. Robinson

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-91-1828.62)

MINOR, Judge.

In this appeal, Barry L. Robinson, who is serving a life sentence for his 1992 murder conviction, asserts that he has a right to be resentenced under the voluntary sentencing standards. Because the voluntary

standards do not apply to sentences imposed before their effective date, Robinson has no right to relief.

FACTS AND PROCEDURAL HISTORY

A jury convicted Robinson of murder in 1992, see § 13A-6-2, Ala. Code 1975, and the circuit court sentenced him, as a habitual felony offender, to life imprisonment. Robinson did not appeal his conviction or sentence.¹

Robinson filed this petition for postconviction relief under Rule 32, Ala. R. Crim. P., in July 2022.² In his petition, Robinson alleged what is

¹Robinson filed his first petition under Rule 32, Ala. R. Crim. P., in 1993. This Court, in an unpublished memorandum, affirmed the judgment dismissing that petition. Robinson v. State (No. CR-93-0131), 662 So. 2d 303 (Ala. Crim. App. 1994) (table). See Nettles v. State, 731 So. 2d 626, 629 (Ala. Crim. App. 1998) ("this Court may take judicial notice of its own records" (citing Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992))).

²The circuit court granted Robinson's request to proceed in forma pauperis ("IFP"). The record shows, however, that Robinson had deposits of \$1,348.30 in his inmate account in the 12 months before he filed his IFP request. The record does not show how much the filing fee for a postconviction petition is in the Madison Circuit Court, but if \$1,348.30 was "appreciably more than the amount necessary to pay [the] filing fee," the circuit court would not have abused its discretion if it had denied his IFP request. See Ex parte Wyre, 74 So. 3d 479, 483 (Ala. Crim. App. 2011) ("[A]n inmate who has appreciably more than the amount necessary to pay a filing fee deposited in his inmate account in the 12 months

in essence a single claim—that he has a right to be resentenced under the voluntary sentencing standards. Robinson presented different theories in support of this claim: (1) that his sentence is illegal because, he said, the voluntary sentencing standards require a new sentencing proceeding; (2) that the voluntary sentencing standards replaced former § 13A-5-9.1, Ala. Code 1975,³ which allowed certain offenders to move for resentencing, and he asserted that he should have a chance to be resentenced under the voluntary standards; and (3) that his sentence is illegal because, he said, it exceeds the maximum allowed under the voluntary standards.⁴

preceding the filing of an [in forma pauperis] request is not indigent as that term is defined in Rule 6.3(a), Ala. R. Crim. P.").

³Effective March 13, 2014, Act No. 2014-165, Ala. Acts 2014, repealed § 13A-5-9.1, Ala. Code 1975.

⁴As pleaded, Robinson's theories in support of his claim roughly fit some of the different grounds that a petitioner may assert under Rule 32.1, Ala. R. Crim. P., to challenge his conviction or sentence. Thus, the circuit court did not err in treating Robinson's filing as a Rule 32 petition. See Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002) ("[T]he substance of a motion and not its style determines what kind of motion it is.").

If Robinson had pleaded his claims as a mere request to be resentenced under the sentencing standards, the circuit court would have had no jurisdiction over that motion. See, e.g., State v. Monette, 887 So. 2d 314, 315 (Ala. Crim. App. 2004) (a circuit court "retains jurisdiction to

The State responded and moved to dismiss the petition, asserting, among other things, that the claims were insufficiently pleaded or lacked merit and that the claims were untimely under Rule 32.2(c), Ala. R. Crim. P. The circuit court summarily dismissed the petition, and Robinson timely appealed.

STANDARD OF REVIEW

"Rule 32.7(d), Ala. R. Crim. P., permits a circuit court to summarily dismiss a Rule 32 petition if the claims in the petition are insufficiently pleaded, are precluded, or are without merit. This Court reviews a circuit court's summary dismissal of a Rule 32 petition for an abuse of discretion. Lee v. State, 44 So. 3d 1145, 1149 (Ala. Crim. App. 2009). Under most circumstances, 'we may affirm a ruling if it is correct for any reason.' Bush v. State, 92 So. 3d 121, 134 (Ala. Crim. App. 2009)."

Spain v. State, 336 So. 3d 1167, 1171 (Ala. Crim. App. 2020).

DISCUSSION

On appeal, Robinson reiterates his assertion that he has a right to be resentenced under the voluntary sentencing standards. He does not.

modify a sentence for 30 days after that sentence is pronounced"). See also Ex parte Hitt, 778 So. 2d 159, 162 (Ala. 2000) ("Although this principle is not directly stated in the Rules of Criminal Procedure, the Court of Criminal Appeals has held that if a motion for a new trial or a request to modify a sentence is not filed within 30 days after sentencing, then at the end of the 30th day the trial court loses all jurisdiction to modify a defendant's sentence.").

In Clark v. State, 166 So. 3d 147 (Ala. Crim. App. 2014), this Court addressed Freddie L. Clark's claim that he had a right to be sentenced under the presumptive standards because, although he had committed his offense before the effective date of the presumptive standards, the standards took effect before he was sentenced. This Court set out a brief history of the presumptive and voluntary sentencing standards:

"The Alabama Sentencing Reform Act of 2003 ('the Act'), as amended effective October 1, 2006, created voluntary sentencing standards to, among other things, assist trial judges in determining the most appropriate sentence for convicted felony offenders. See § 12-25-31(a)(1), Ala. Code 1975. At the time the Act was passed, a trial judge had the discretion to sentence a defendant either pursuant to the voluntary sentencing standards or pursuant to the HFOA [the Habitual Felony Offender Act, § 13A-5-9, Ala. Code 1975]. See State v. Crittenden, 17 So. 3d 253, 259 (Ala. Crim. App. 2009).

"In 2012, the legislature enacted § 12-25-34.2, Ala. Code 1975, effective May 15, 2012, to implement presumptive sentencing standards in place of the voluntary sentencing standards. See Act No. 2012-473, Ala. Acts 2012. Section 12-25-34.2(b), Ala. Code 1975, provides:

"The voluntary sentencing standards as provided for in Section 12-25-34, as applied to nonviolent offenses shall become presumptive sentencing standards effective October 1, 2013, to the extent the modification adopted by the Alabama Sentencing Commission become effective October 1, 2013. The standards shall be applied by the courts in sentencing subject to departures as provided herein. To accomplish this purpose as to

the existing initial voluntary sentencing standards, the Alabama Sentencing Commission shall adopt modifications to the standards, worksheets, and instructions to the extent necessary to implement this provision including, but not limited to, defining aggravating and mitigating factors that allow for departure from the presumptive sentencing recommendations. The commission's modifications shall be presented to the Legislature in the commission's annual report within the first five legislative days of the 2013 Regular Session.'"

166 So. 3d at 149.

After stating that generally "[a] defendant's sentence is determined by the law in effect at the time of the commission of the offense,"" id. (quoting M.H. v. State, 6 So. 3d 41, 49 (Ala. Crim. App. 2008), quoting in turn Davis v. State, 571 So. 2d 1287, 1289 (Ala. Crim. App. 1990)), we held that the controlling law was the law that was in effect when Clark was sentenced rather than when he committed the offense:

"We have reviewed Act No. 2012-473, Ala. Acts 2012, and § 12-25-34.2(b), Ala. Code 1975, and there is no express statement that § 12-25-34.2(b) is to apply retroactively. There is, however, an indication that the legislature intended the presumptive sentencing standards to apply retroactively.

"Section 12-25-34(d), Ala. Code 1975, explains, in part, as follows:

"Commencing with the 2013 Regular Session, any modification to the initial voluntary sentencing standards made by the commission shall be contained in the annual report presented to the Governor, the Legislature, the Chief Justice, and the Attorney General. An annual report containing proposed modifications shall be presented to the Governor, the Legislature, the Chief Justice, and the Attorney General at least forty-five days prior to each regular session of the Legislature. The modifications presented for nonviolent offenses shall become effective on October 1 following the legislative session in which the modifications were presented unless rejected by an act of the Legislature enacted by bill during the legislative session.'

"(Emphasis added.)

"Although § 12-25-34.2(b), Ala. Code 1975, does not expressly state that the presumptive sentencing standards are to be applied retroactively, that Code section requires the Alabama Sentencing Commission ('the Commission') to create an annual report 'containing proposed modifications' to the sentencing standards and to submit those proposed modifications to the legislature; those proposed modifications for nonviolent offenses, as explained in § 12-25-34(d), Ala. Code 1975, are then adopted by the legislature, unless expressly rejected by the passage of a bill. Thus, to determine what the legislature 'intended' with regard to the presumptive sentencing standards we must look to the proposed modifications that were adopted by the legislature.

"Before the 2013 legislative session, the Commission, complying with the legislative mandate in § 12-25-34(d), Ala. Code 1975, submitted to the legislature the '2013 Report.' In that report, the Commission explained, in its 'Executive Summary':

"'With considerable input from all facets of the criminal justice system as represented on both the Alabama Sentencing Commission and the Commission's Standards Committee, the Commission directed the major portion of its resources and time to carrying out the 2012 statutory mandates. The Commission, at the direction of the Legislature, focused this year's efforts on making the necessary modifications to the Initial Voluntary Sentencing Standards to implement presumptive sentencing recommendations for non-violent offenses sentenced on or after October 1, 2013, and at the request of criminal justice practitioners, adding additional drug offenses to the Sentencing Standards and amending the drug sentence length table.'

"Alabama Sentencing Commission 2013 Annual Report IX. In the 2013 Report, the Commission explained that the proposed modifications 'apply only to non-violent offenses,' and it attached the proposed modifications to the 2013 Report as 'Appendix A.' In Appendix A, in the section entitled 'General Instructions,' the proposed modifications included 'subdividing' property offenses into two subsets—the first included only burglary offenses, which remained voluntary, and the second included all other 'guideline' property offenses, which were to become presumptive. See 2013 Report A6. The proposed modifications explained that

"'[t]he second property subset, now designated as "Property A," contains all other covered property offenses and those recommendations, along with the recommendations for covered drug offenses, become presumptive for applicable cases sentenced on or after October 1, 2013.'

"2013 Report A6.

"The Commission's proposed modifications were not rejected by the legislature by the passage of a bill during the legislative session and, consequently, became effective on October 1, 2013. See § 12-25-34(d), Ala. Code 1975. Thus, the proposed modifications are the expressed intent of the legislature as to the application and administration of the presumptive sentencing standards."

Clark, 166 So. 3d at 150-51.

Because Clark's conviction for unlawful distribution of a controlled substance was a nonviolent offense included on the drug-offense worksheet and because Clark was not sentenced before the effective date of the presumptive sentencing standards (October 1, 2013), this Court held that the circuit court erred when it did not sentence Clark under the presumptive standards. 166 So. 3d at 151.

Robinson is mistaken in his belief that the voluntary sentencing standards set aside his 1992 sentence or render that sentence illegal. The voluntary sentencing standards apply only "to convictions for felony offenses sentenced on or after October 1, 2006." § 12-25-34(3), Ala. Code 1975 (emphasis added). Unlike Clark, who was sentenced after the October 1, 2013, effective date of the presumptive sentencing standards,

Robinson was sentenced in 1992, before the effective date of the initial voluntary standards.

Robinson also is mistaken in his belief that he has a right to be resentenced under the voluntary sentencing standards. There is no authority supporting Robinson's assertion that the voluntary sentencing standards "replaced" former § 13A-5-9.1, Ala. Code 1975, and permit certain offenders to move for resentencing.

Although the Sentencing Standards Manual requires a court imposing a sentence after October 1, 2013, to consider the voluntary standards, the court has unreviewable discretion to depart from those standards and to impose a sentence "completely under existing law regarding length of sentence." Id. at 27. Unlike Clark, who committed a nonviolent offense that is included on the presumptive drug-offense worksheet, Robinson committed murder. Section 12-25-32(15)2, Ala. Code 1975, designates murder as a violent offense. Murder remains a voluntary-standards offense, covered by the "Personal Worksheets" in the Sentencing Standards Manual. Id. at 23. Thus, even if Robinson were to get his current life sentence set aside, the court resentencing him would not have to impose a sentence under the voluntary standards.

CONCLUSION

Robinson is due no relief, and the circuit court did not err in summarily dismissing his Rule 32 petition. Rule 32.7(d), Ala. R. Crim. P.

The judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.